

AN ACT relating to administrative streamlining within the Department of Insurance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.3-180 is amended to read as follows:

(1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the commissioner or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:

(a) Payment of the continuation fee provided in Subtitle 4 by March 1, or, if paid by mail, postmarked no later than March 1;

(b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;

(c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and

(d) Due filing by domestic companies of quarterly statements as ordered by the commissioner.

(2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the **March 31** ~~June 30~~ next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

(3) The commissioner may, in his or her discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration **and paid the fine as set forth in section 22 of this act.** Otherwise the insurer shall

be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.

(4) Beginning with the statutory audits for the year 2010, an insurer shall not use the same lead or coordinating partner of an accounting firm responsible for preparing the audited financial statement for more than five (5) consecutive years.

Section 2. KRS 304.9-105 is amended to read as follows:

(1) An individual applying for an agent license shall make application to the commissioner on the uniform individual application or other application prescribed by the commissioner.

Before approving the application, the commissioner shall find that the applicant:

(a) Is at least eighteen (18) years of age;

(b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;

(c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;

(d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the commissioner;

(e) Is competent to exercise the license and has:

1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The commissioner shall promulgate administrative regulations to carry out the purpose of this section;

2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the commissioner for the lines of authority for which the individual has applied; and

3. Paid the fees set forth in KRS 304.4-010; and

(f) Is financially responsible to exercise the license and has ***maintained in effect while so licensed:***

1. ~~[a.] [Filed with the commissioner]~~ the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year~~[-, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the commissioner]~~; or

2. ~~[b.]~~ A ~~[Deposited with the commissioner cash, or a]~~ cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or

1 ~~3. [c.]~~ **An** ~~[Filed with the commissioner on his or her behalf, by an authorized~~
2 ~~insurer or group of affiliated insurers for which he or she is or is to become an~~
3 ~~exclusive agent, an]~~ agreement **by an authorized insurer or group of affiliated**
4 **insurers for which he or she is or is to become an exclusive agent** whereby the
5 insurer or group of affiliated insurers agrees to assume responsibility, to the
6 benefit of any aggrieved party, for legal liability of the licensed person as the
7 result of erroneous acts or failure to act in his or her capacity as an insurance
8 agent on behalf of the insurer or group of affiliated insurers in the sum of twenty
9 thousand dollars (\$20,000) for any single occurrence and that the agreement shall
10 not be terminated until the license is surrendered to the commissioner ~~[or at least~~
11 ~~thirty (30) days' prior written notice will have been given to the commissioner,~~
12 ~~whichever shall first occur];~~

13 ~~[2. — Agreed with the commissioner that if at any time notice is given to the~~
14 ~~commissioner that any policy filed in accordance with subparagraph 1.a. of this~~
15 ~~paragraph, or agreement filed in accordance with subparagraph 1.c. of this~~
16 ~~paragraph, is to be terminated and has not been replaced by another policy or~~
17 ~~agreement within the time established by regulations of the commissioner, or if~~
18 ~~any deposit in accordance with subparagraph 1.b. of this paragraph be reduced~~
19 ~~through levy of execution and not replaced by any necessary additional deposit~~
20 ~~within the time established by administrative regulations of the commissioner,~~
21 ~~any and all licenses held by the licensee are terminated and shall be promptly~~
22 ~~surrendered to the commissioner without demand.]~~

(2) The commissioner may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

Section 3. KRS 304.9-133 is amended to read as follows:

(1) A business entity issued a license in accordance with this subtitle, or issued a life settlement broker or life settlement provider license, shall designate only individuals to act under the business entity license.

(2) Each designated individual shall:

(a) Hold the same kind of license as the business entity;

(b) If the business entity license has lines of authority, have one (1) or more of the same lines of authority; and

(c) If the individual is designated under an agent license, have at least one (1) appointment with an insurer.

(3) The licensed business entity shall file with the commissioner:

(a) Notice of the designation of an individual within thirty (30) days of the designation; and

(b) Notice of termination of designation of an individual within thirty (30) days of the termination of designation.

(4) A licensed business entity shall exercise its license only through a designated individual licensee.

(a) The business entity shall have for each of its active lines of authority at least one

(1) licensed individual with the same line of authority designated with the commissioner.

If the business entity fails to have at least one (1) licensed individual designated with the commissioner for a line of authority, that line of authority shall become inactive; and

(b) The business entity shall have at least one (1) licensed individual designated with the commissioner at all times. If the business entity fails to have at least one (1) individual designated with the commissioner, the business entity license shall terminate and shall be promptly surrendered to the commissioner without demand.

(5) An insurer that has appointed the business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license as if the insurer had appointed the individual licensee.

(6) A business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license.

Section 4. KRS 304.9-320 is amended to read as follows:

For the protection of the people of this Commonwealth the commissioner shall not issue, continue, or permit to exist any license as consultant except in compliance with this subtitle, or as to any person not qualified therefor as follows:

(1) If an individual, the applicant:

(a) Must be eighteen (18) or more years of age;

(b) Must have had not less than five (5) years of actual experience as a licensed agent with respect to the kinds of insurance and contracts to be covered by the license, or other special experience, education or training, all of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant;

(c) Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;

(d) Must satisfy the commissioner by written examination; and

(e) Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation. ~~[; and~~

~~(f) — Must have filed the bond required by KRS 304.9-330.]~~

(2) If a business entity, the applicant:

(a) Must complete and submit a National Association of Insurance Commissioners uniform license application;

(b) Must pay applicable fees as set forth in KRS 304.4-010;

(c) Must be competent, trustworthy under the highest fiduciary standards, financially responsible, and of good business reputation; and

(d) Must designate each individual authorized to act for the business entity under its consultant license in accordance with KRS 304.9-133.

(3) A consultant license shall cover either or both of the following categories, as selected by the licensee:

(a) Property and casualty; or

(b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

Section 5. KRS 304.9-330 is amended to read as follows:

(1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, every licensed consultant ~~[applicant for license as a consultant shall file with the commissioner with his or her application for license, and]~~ shall maintain in effect while so licensed:

1 (a) The certificate of an insurer authorized to write legal liability insurance in this
2 state, that the insurer has and will keep in effect on behalf of the consultant a
3 policy of insurance covering the legal liability of the consultant as the result of
4 erroneous acts or failure to act in his or her capacity as an insurance
5 consultant, and inuring to the benefit of any aggrieved party as the result of
6 any single occurrence in the sum of not less than twenty thousand dollars
7 (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for
8 all occurrences within one (1) year~~[-and that the policy shall not be terminated~~
9 ~~unless at least thirty (30) days prior written notice will have been given to the~~
10 ~~commissioner]~~; or

11 (b) A ~~[deposit with the commissioner of cash, or a]~~ cash surety bond executed by
12 an insurer authorized to write this business in this Commonwealth, in the sum
13 of twenty thousand dollars (\$20,000) which shall be subject to lawful levy of
14 execution by any party to whom the consultant has been found to be legally
15 liable as the result of erroneous acts or failure to act in his or her capacity as a
16 consultant.

17 (2) The bond shall indemnify any person damaged by any fraudulent or unlawful act or
18 conduct of the licensee in transactions under the license, and shall likewise be
19 conditioned upon faithful accounting and application of all moneys coming into the
20 licensee's possession in connection with his or her activities as the licensee.

21 (3) The bond shall remain in force ~~[until released by the commissioner, or]~~ until canceled
22 by the surety. Without prejudice to any liability previously incurred thereunder, the
23 surety may cancel the bond upon thirty (30) days advance written notice to the

licensee ~~[and the commissioner]~~.

Section 6. KRS 304.10-030 is amended to read as follows:

(1) "Admitted Insurer" means an insurer that is licensed, or authorized, to transact the business of insurance in Kentucky.

(2) "Affiliate" means with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) "Broker" as used in this subtitle means a surplus lines broker duly licensed as such under this subtitle.

(4) "Exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(a) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(b) The person has paid aggregate nationwide commercial property and casualty insurance premium in excess of \$100,000 in the immediately preceding twelve (12) months;

(c) 1. The person meets at least one (1) of the following criteria:

a. The person possesses a net worth in excess of \$20,000,000, adjusted pursuant to paragraph (c)2. of this subsection;

b. The person generates annual revenues in excess of \$50,000,000, as adjusted pursuant to paragraph (c)2. of this subsection;

1 c. The person employs more than five hundred (500) full-time or
2 full-time equivalent employees per individual insured or is a
3 member of an affiliated group employing more than one
4 thousand (1,000) employees in the aggregate;

5 d. The person is a non-for-profit organization or public entity
6 generating annual budgeted expenditures of at least
7 \$30,000,0000, adjusted pursuant to paragraph (c)2. of this
8 subsection; or

9 e. The person is a municipality with a population in excess of fifty
10 thousand (50,000) persons.

11 2. Effective on the fifth January 1 occurring after the date of enactment of
12 this act, and each fifth January 1 occurring thereafter, the amounts in
13 paragraphs (c)1.a, (c)1.b., and (c)1.c. of this subsection shall be adjusted
14 to reflect the percentage change for the 5-year period in the Consumer
15 Price Index for All Urban Consumers published by the Bureau of Labor
16 Statistics of the Department of Labor.

17 (5) [(2)] To "export" means to place in an unauthorized insurer under this Surplus Lines Law
18 insurance covering a subject of insurance resident, located or to be performed in
19 Kentucky.

20 (6) "Home State" means:

21 (a) 1. The state in which an insured maintains its principal place of business
22 or, in

the case of an individual, the individual's principal residence; or

2. If 100 percent of the insured risk is located out of the state referred to in paragraph (a)1. of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(b) If more than one insured from an affiliated group are named insureds on a single non-admitted Insurance contract, the home state, as determined pursuant to paragraph (a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract.

(7) "Non-Admitted Insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept the insurance.

(8) "Non-Admitted Insurer" means an insurer that is not authorized or admitted to transact the business of insurance in Kentucky.

Section 7. KRS 304.10-040 is amended to read as follows:

Non-admitted insurance sold to, solicited by, or negotiated with an insured whose home state is

Kentucky, ~~[If certain insurance coverages cannot be procured from authorized insurers such~~

~~coverages]~~ hereinafter designated as "surplus lines," may be procured from a non-admitted insurer

~~[unauthorized insurers]~~ subject to the following conditions:

(1) The insurance must be procured through a licensed surplus lines broker.

(2) The full amount of insurance required must not be procurable, after diligent effort by a licensed agent with a line of authority for property and casualty has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of

insurance in this state, and the amount of insurance exported shall be only the excess over the amount procurable from authorized insurers.

(3) The insurance must not be so exported for the purpose of securing advantages either as to:

(a) A lower premium rate than would be accepted by an authorized insurer; or

(b) Terms of the insurance contract.

(4) The requirements of subsection (2) related to a diligent effort, shall not be required for coverage procured or placed for an exempt commercial purchaser if:

(a) The broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the broker to procure or place insurance from a nonadmitted insurer.

Section 8. KRS 304.10-070 is amended to read as follows:

(1) A broker shall place surplus lines insurance only with an insurer that he or she knows, or in the exercise of reasonable diligence could know, the insurer:

(a) Is authorized to write the type of insurance in its domiciliary jurisdiction;

(b) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of:

1. The minimum capital and surplus requirements set forth in KRS 304.3-120; or

1 2. \$15,000,000; and

2 (c) Is listed on the quarterly listing of alien insurers maintained by the National
3 Association of Insurance Commissioners, if the insurer is a nonadmitted
4 insurer domiciled outside of the United States.

5 [~~Has a surplus in regard to policyholders of less than six million dollars (\$6,000,000);~~

6 ~~(b) Has not established satisfactory evidence of good repute and financial integrity;~~

7 ~~(c) Is unsound financially; or~~

8 ~~(d) Is ineligible under the Kentucky insurance code.-]~~

9 (2) A broker may:

10 (a) Place insurance covering certificates of investment with an insurance company or
11 guarantee fund which is financially sound and has capital funds and reserves in
12 excess of fifteen million dollars (\$15,000,000); and

13 (b) Place insurance with a United States insurance exchange which the commissioner,
14 in his or her discretion, may designate for use by surplus lines brokers licensed by
15 the Commonwealth of Kentucky.

16 (3) A broker shall not place insurance with an alien insurer that is not recognized by the
17 National Association of Insurance Commissioners and does not maintain in the United
18 States a trust fund for the benefit of United States policyholders of at least five million
19 four hundred thousand dollars (\$5,400,000).

20 (4) A broker shall not place insurance with an insurer that has engaged in the insurance
21 business less than three (3) years unless the insurer has deposited with the commissioner
22 publicly-traded securities with a market value of at least six hundred thousand dollars
23 (\$600,000).

(5) This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the commissioner may revoke eligibility, or may order the insurer to comply with this section or may suspend the operation of the insurer in Kentucky.

(6) The commissioner may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The commissioner shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the commissioner has reason to believe that a surplus lines insurer:

- (a) Is in unsound financial condition;
- (b) Has acted in an untrustworthy manner;
- (c) No longer meets the standards set forth in this subtitle;
- (d) Has willfully violated the laws of Kentucky; or
- (e) Does not conduct a proper claims practice.

Section 9. KRS 304.10-120 is amended to read as follows:

(1) Any person who:

(a) Is a resident of Kentucky or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140; and

(b) ~~[Holds an agent license with lines of authority for property and casualty; and~~

~~(c)]~~ Is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines;

may be licensed as a surplus lines broker.

(2) Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.

(3) The license fee shall be as specified in KRS 304.4-010.

(4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 of this chapter.

(5) Notwithstanding subsection (1) of this section, on or after July 1, 2002, an applicant licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.

(6) If the resident surplus lines broker fails to maintain his or her agent license with lines of authority for property and casualty, the surplus lines broker license shall terminate and shall be promptly surrendered to the commissioner without demand.

Section 10. KRS 304.10-140 is amended to read as follows:

(1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, ~~[prior to issuance of a license as a surplus lines broker, the applicant shall file with the commissioner, and]~~ for as long as the license remains in effect, **a licensed surplus lines broker** shall keep in force:

(a) Evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or a combination of a bond issued by an authorized corporate surety and a deposit.

~~[The policy, bond, deposit, or combination of a bond or deposit shall not be~~

~~terminated unless at least thirty (30) days' prior written notice is given to the licensee and the commissioner]; and~~

(b) A bond in favor of the State of Kentucky in the penal sum of fifty thousand dollars (\$50,000), with an authorized corporate surety guaranteeing that he or she will conduct business under the license in accordance with the provisions of this subtitle and that he or she will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any bond shall in no event exceed the penal sum. ~~[No bond shall be terminated unless not less than thirty (30) days' prior written notice is given to the licensee and filed with the commissioner.]~~

(2) An insurer issuing coverage under subsection (1)(a) or (b) of this section may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the surplus lines broker applicant or licensee for the payment of claims. Deductible amounts offered in accordance with this section shall be fully disclosed to the applicant or licensee in writing. If the applicant or licensee chooses a deductible policy, the insurer shall pay the deductible amount initially and the licensee shall be liable to the insurer, at the time and in the manner prescribed in the policy, for the amount of the deductible. If the licensee fails to reimburse the insurer as required by this subsection, his or her surplus lines broker license and all other licenses issued by the commissioner are revoked and shall be promptly surrendered to the commissioner without demand. Nothing contained in this subsection is intended to or shall in any manner alter or affect the rights of the insurer to collect the reimbursement for the deductible from the surplus lines broker.

SECTION 11. A NEW SECTION OF KRS CHAPTER 304, SUBTITLE 37 IS
CREATED TO READ AS FOLLOWS:

- (1) With respect to any insurer registered under section 13 of this act, and in accordance with subsection 3 of this section, the commissioner shall have the authority to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this subtitle. The powers of the commissioner with respect to supervisory colleges include, but are not limited to:
- (a) Initiating the establishment of a supervisory college;
 - (b) Clarifying the membership and participation of other supervisors in the supervisory college;
 - (c) Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
 - (d) Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
 - (e) Establishing a crisis management plan.
- (2) Each registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in a supervisory college in accordance with subsection 3 of this section, including reasonable travel expenses. For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the regulators

charged with the supervision of the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of these expenses.

(3) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with KRS 304.37-040, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with KRS 304.37-050 providing the basis for cooperation between the commissioner and the other regulatory agencies, and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the commissioner to regulate or supervise the insurer or its affiliates within its jurisdiction.

Section 12. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

- (1) The term "commissioner" shall mean the commissioner of insurance or the Department of Insurance, as appropriate;
- (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance except it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.;

- 1 (3) An "insurance holding company system" consists of two (2) or more affiliated persons,
2 one (1) or more of which is an insurer;
- 3 (4) An "affiliate", or person "affiliated" with a specific person, is a person that directly, or
4 indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under
5 common control with, the person specified;
- 6 (5) A "person" is an individual, a corporation, a partnership, an association, a joint stock
7 company, an unincorporated organization, any similar entity, or any combination of the
8 foregoing acting in concert, but shall not include any bank in its fiduciary capacity or
9 securities broker performing no more than the usual and customary broker's function;
- 10 (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or
11 indirectly through one (1) or more intermediaries;
- 12 (7) The term "voting security" shall include any security convertible into or evidencing a
13 right to acquire a voting security; and
- 14 (8) The terms "control," "controlling," "controlled by," and "under common control with"
15 mean the possession, direct or indirect, of the power to direct or cause the direction of the
16 management and policies of a person, whether through the ownership of voting securities,
17 by contract other than a loan contract or commercial contract for goods or
18 nonmanagement services, or otherwise, unless the power is the result of an official
19 position with or corporate office held by the person. Control shall be presumed to exist if
20 any person, directly or indirectly, owns, controls, holds with the power to vote, or holds
21 proxies representing ten percent (10%) or more of the voting securities of any other
22 person. This presumption may be rebutted by a showing made in the manner provided by
23 KRS 304.37-020(12) that control does not exist in fact. The commissioner may

determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(9) “Enterprise risk” shall mean any activity, circumstance, event or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse affect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital to fall into company action level as set forth in KRS 304.3-125 and administrative regulations promulgated thereunder or would cause the insurer to be in hazardous financial condition in accordance with KRS 304.2-065.

(10) “Securityholder” shall mean one who owns any security of a specified person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing.

(11) “Supervisory college” shall mean a forum for cooperation and communication between the involved supervisors established for the fundamental purpose of facilitating the effectiveness of supervision of entities which belong to an insurance group; facilitating both the supervision of the group as a whole on a group-wide basis and improving the legal entity supervision of the entities within the insurance group.

Section 13. KRS 304.37-020 is amended to read as follows:

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign or alien insurer subject to disclosure requirements and standards adopted by

statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

- (a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;
- (b) The identity of every member of the insurance holding company system;
- (c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:
 - 1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - 2. Purchases, sales, or exchanges of assets;
 - 3. Transactions not in the ordinary course of business;

4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
 5. All management and service contracts and all cost-sharing arrangements;
 6. All reinsurance agreements;
 7. Dividend and other distributions to shareholders; and
 8. Consolidated tax allocation agreements;
- (d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system; and
- (e) *If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1932, as amended. An insurer required to file financial statements pursuant to this paragraph may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the U.S. Securities and Exchange Commission.*
- (f) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

1 (g) *Statements that the insurer's board of directors oversees corporate governance*
2 *and internal controls and that the insurer's officers or senior management have*
3 *approved, implemented, and continue to maintain and monitor corporate*
4 *governance and internal control procedures.*

5 (h) *Any other information required by the commissioner through administrative*
6 *regulations.*

7 (3) It shall not be necessary to disclose information on the registration statement filed
8 pursuant to subsection (2) of this section if the information is not material for the
9 purposes of this section. Unless the commissioner by administrative regulation or order
10 provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or
11 investments, involving one-half of one percent (0.5%) or less of an insurer's admitted
12 assets as of the thirty-first day of December next preceding shall not be deemed material
13 for purposes of this section.

14 (4) Each registered insurer shall keep current the information required to be disclosed in its
15 registration statement by reporting all material changes or additions on amendment forms
16 provided by the commissioner within thirty (30) days after the end of the month in which
17 it learns of each change or addition.

18 (5) All registration statements shall contain a summary outlining all items in the current
19 registration statement representing changes from the prior registration statement.

20 (6) Subject to KRS 304.37-030(5), each registered insurer shall report to the commissioner
21 all dividends and other distributions to shareholders within fifteen (15) business days
22 following the dividend or distribution declaration.

- (7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.
- (8) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- (9) The commissioner may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (10) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.
- (11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by administrative regulation or order shall exempt it from the provisions of this section.
- (12) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. **A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty (30) days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which**

1 shall be granted. The disclaiming party shall be relieved of its duty to register under
2 this section if approval of the disclaimer has been granted by the commissioner, or if
3 the disclaimer is deemed to have been approved. [After a disclaimer has been filed, the
4 insurer shall be relieved of any duty to register or report under this section which may
5 arise out of the insurer's relationship with the person unless and until the commissioner
6 disallows the disclaimer. The commissioner shall disallow the disclaimer only after
7 furnishing all parties in interest with notice and opportunity to be heard and after making
8 specific findings of fact to support the disallowance.]

9 (13) The ultimate controlling person of every insurer subject to registration shall also file
10 an annual enterprise risk report. The report shall, to the best of the ultimate
11 controlling person's knowledge and belief, identify the material risks within the
12 insurance holding company system that could pose enterprise risk to the insurer. The
13 report shall be filed with the lead state commissioner of the insurance holding
14 company system as determined by the procedures within the Financial Analysis
15 Handbook adopted by the National Association of Insurance Commissioners.

16 (14) The failure to file a registration statement or any amendment thereto, summary of the
17 registration statement, or enterprise risk filing required by this section within the time
18 specified for the filing shall be a violation of this subtitle.

19 Section 14. KRS 304.37-030 is amended to read as follows:

20 (1) Material transactions by registered insurers with their affiliates shall be subject to the
21 following standards:

22 (a) The terms shall be fair and reasonable;

(b) Agreements for cost sharing services and management shall include provisions as required by administrative regulations promulgated by the commissioner.

(c) Charges or fees for services performed shall be reasonable;

(d) [(e)] Expenses incurred and payment received shall be allocated to the insurer in conformity with consistently applied accounting practices;

(e) [(d)] The books, accounts, and records of each party shall be maintained to clearly and accurately disclose the precise nature and details of the transactions; and

(f) [(e)] The insurer's surplus as regards policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to section (2)(a)4. of this section, which are subject to any materiality standards contained in paragraphs (a)1. through (a)7. of this subsection, shall not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that time. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty (30) days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;
2. Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding;
3. Reinsurance agreements or modifications **including:**
 - a. All reinsurance pooling agreements;**
 - b. Agreements** in which the reinsurance premium or a change in the insurer's liabilities, **or the projected reinsurance premium or a change in the insurer's liability in any of the next three (3) years,** equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding,

including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;

4. All management agreements, service contracts, and all cost sharing arrangements; ~~and~~

5. Guarantees when made by a domestic insurer; provided, however, that a guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph unless it exceeds the lesser of one-half of one percent (0.5%) of the insurer's admitted assets or ten percent (10%) of surplus as regards policyholders as of the 31st day of December next preceding. All guarantees which are not quantifiable as to amount shall be subject to the notice requirements of this paragraph;

6. Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holding in investments, exceeds two and one-half percent (2.5%) of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired pursuant to KRS 304.37-110, authorized under KRS Chapter 304, Subtitle 37, or in non-subsidiary insurance affiliates that are subject to the provisions of this act are exempt from this requirement; and

7. Any material transactions, specified by regulation, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) This subsection shall not authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(c) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, the commissioner may exercise his or her authority under KRS 304.99-151.

(d) The commissioner, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.

(3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and

directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.

(4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) The extent to which the insurer's business is diversified among the several lines of insurance;

(c) The number and size of risks insured in each line of business;

(d) The extent of the geographical dispersion of the insurer's insured risks;

(e) The nature and extent of the insurer's reinsurance program;

(f) The quality, diversification, and liquidity of the insurer's investment portfolio;

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) The surplus as regards policyholders maintained by other comparable insurers;

(i) The adequacy of the insurer's reserves; and

(j) The quality and liquidity of investments in subsidiaries. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders if in his or her judgment the investment warrants.

(5) No insurer subject to registration under KRS 304.37-020 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until thirty (30) days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment, or the commissioner shall have approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distribution made within the preceding twelve (12) months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 next preceding, or (b) the net gain from operations of the insurer company, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve (12) month period ending December 31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and the declaration shall confer no rights upon stockholders until the commissioner has approved the payment of the dividend or distribution or until the commissioner has not disapproved the payment within the thirty (30) day period referred to in this section.

Section 15. KRS 304.37-040 is amended to read as follows:

(1) Subject to the limitation contained in this section and in addition to the powers which the commissioner has under KRS Chapter 304 relating to the examination of insurers, the commissioner shall also have the power to:

(a) Examine an insurer registered under section 13 of this act and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by:

1. The ultimate controlling party,

2. Any entity or combination of entities within the insurance holding company system; or

3. The insurance holding company system on a consolidated basis.

(b) Order ~~[order]~~ any insurer registered under KRS 304.37-020 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to **determine compliance with this subtitle; and** ~~[ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such affiliates to obtain such information.]~~

(c) Order any insurer registered under section 13 of this act to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual relationships, statutory obligations or another method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Failure of the insurer

to provide the information without good cause may result in a penalty pursuant to KRS 304.99-020.

(2) The commissioner shall exercise his or her power under subsection (1) of this section only if the examination of the insurer under KRS Chapter 304 is inadequate or the interests of the policyholders of such insurer may be adversely affected.

(3) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1) of this section. Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) of this section shall be liable for and shall pay the expense of such examination in accordance with the provisions of KRS Chapter 304.

(5) In the event the insurer fails to comply with an order, the commissioner shall have the power to examine the affiliates to obtain the information and may subpoena witnesses in accordance with KRS 304.2-340.

Section 16. KRS 304.37-120 is amended to read as follows:

(1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person

controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner prescribed in this section.

(a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. ~~[However, the person shall file a preacquisition notification with the commissioner containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151.]~~ For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.

(b) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty (30) days prior to the cessation of control. The commissioner shall determine those instances in which the party

seeking to divest or to acquire a controlling interest in an insurer, will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that confidential treatment will interfere with the enforcement of this section. If the statement referred to in subsection (1) of this section is otherwise filed, this paragraph shall not apply.

(c) With respect to a transaction subsection to this section, the acquiring person shall also file a preacquisition notification with the commissioner, which shall contain the information set forth in KRS 304.37-130. A failure to file the notification may be subject to penalties specified in KRS 304.37-130.

(2) The statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and

1. If the person is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or

2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative

1 description of the business intended to be done by the person and the
2 person's subsidiaries, and a list of all individuals who are or who have
3 been selected to become directors or executive officers of the person, or
4 who perform or will perform functions appropriate to these functions. The
5 list shall include for each individual the information required by
6 subparagraph 1. of this paragraph;

7 (b) The source, nature, and amount of the consideration used or to be used in
8 effecting the merger or other acquisition of control, a description of any
9 transaction in which funds were or are to be obtained for merger or other
10 acquisition of control, including any pledge of the insurer's stock, or the stock of
11 any of its subsidiaries or controlling affiliates, and the identity of persons
12 furnishing the consideration; but if a source of the consideration is a loan made in
13 the lender's ordinary course of business, the identity of the lender shall remain
14 confidential, if the person filing the statement so requests;

15 (c) Fully audited financial information as to the earnings and financial condition of
16 each acquiring party for the preceding five (5) fiscal years of each acquiring party,
17 or for a lesser period that the acquiring party and any predecessors have been in
18 existence, and similar unaudited information as of a date not earlier than ninety
19 (90) days prior to the filing of the statement;

20 (d) Any plans or proposals which each acquiring party may have to liquidate the
21 insurer, to sell its assets, or merge or consolidate it with any person, or to make
22 any other material change in its business or corporate structure or management;

- 1 (e) The number of shares of any security referred to in subsection (1) of this section
2 which the acquiring party proposes to acquire, and the terms of the offer, request,
3 invitation, agreement, or acquisition referred to in subsection (1) of this section,
4 and a statement as to the method used to determine the fairness of the proposal;
- 5 (f) The amount of each class of any security referred to in subsection (1) of this
6 section which is beneficially owned, or concerning any security referred to in
7 subsection (1) of this section which there is a right to acquire beneficial
8 ownership of by each acquiring party;
- 9 (g) A full description of any contracts, arrangements, or understandings with respect
10 to any security referred to in subsection (1) of this section in which any acquiring
11 party is involved, such as transfer of any of the securities, joint ventures, loan or
12 option arrangements, puts or calls, guarantees of loans, guarantees against loss or
13 guarantees of profits, division of losses or profits, or the giving or withholding of
14 proxies. The description shall identify the persons with whom these contracts,
15 arrangements, or understandings have been entered into;
- 16 (h) A description of the purchase of any security referred to in subsection (1) of this
17 section during the twelve (12) calendar months preceding the filing of the
18 statement by any acquiring party, including the dates of purchase, names of the
19 purchasers, and consideration paid or agreed to be paid;
- 20 (i) A description of any recommendations to purchase any security referred to in
21 subsection (1) of this section made during the twelve (12) calendar months
22 preceding the filing of the statement, by any acquiring party, or by anyone based
23 upon interviews or at the suggestion of the acquiring party;

- (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates;
- (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section;
- (l) An agreement by the person required to file the statement referred to in subsection (1) of this section that it will provide the annual report specified in section 13 of this act for so long as control exists;
- (m) An acknowledgement by the person required to file the statement referred to in subsection (1) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and
- (n) Any additional information as the commissioner may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest;
- (o) ~~(m)~~ If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by paragraphs (a) to (m)

- [4] of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the commissioner may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation; and
- (n) If any material change occurs in the facts in the statement filed with the commissioner and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the commissioner and sent to the insurer within two (2) business days after the person learns of the change.
- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring a similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
- (4) (a) The commissioner shall approve any merger or other acquisition of control

referred to in subsection (1) of this section unless, after a public hearing the commissioner finds that:

1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
 - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
 - b. The merger or other acquisition shall not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
 - c. The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or

management are unfair and unreasonable to policyholders of the insurer
and not in the public interest;

5. The competence, experience, and integrity of persons who would control
the operation of the insurer would not be in the interest of policyholders of
the insurer and of the public to permit the merger or other acquisition of
control; or

6. The acquisition is likely to be hazardous or prejudicial to the insurance
buying public.

(b) The public hearing required by this section shall be conducted as directed in
Subtitle 2 of this chapter.

(c) The commissioner may retain at the acquiring person's expense any attorneys,
actuaries, accountants, and other experts not otherwise a part of the
commissioner's staff that may be necessary to assist the commissioner in
reviewing the proposed acquisition of control.

(5) The provisions of this section shall not apply to:

(a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing
with the merger or consolidation of a domestic insurer; or

(b) Any offer, request, invitation, agreement, or acquisition which the commissioner,
by order, shall exempt from the section as not having been made or entered into
for the purpose of and not having the effect of changing or influencing the control
of, a domestic insurer, or not comprehended within the purposes of this section; or

(c) Any acquisition of stock of a former mutual by an affiliate company that occurs in
connection with the conversion of a mutual insurer to a stock insurer under KRS

304.24-600 to 304.24-625, provided that no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in KRS 304.24-601.

(6) The following shall be violations of this section:

(a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or

(b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his or her approval.

(7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the commissioner under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his or her last known address by the Secretary of State in the same manner as service of process on foreign insurers.

Section 17. KRS 304.37-565 is amended to read as follows:

(1) A public hearing required by KRS 304.37-505 and 304.37-510 shall be conducted as directed in Subtitle 2 of this chapter and KRS Chapter 13B.

(2) *In lieu of an administrative hearing, the commissioner may, upon agreement of the parties, adopt the findings by the insurance supervisory official of another state.*

(3) In addition to any notice required by this chapter and KRS Chapter 13B, the department shall supplement any notice by newspaper publication and broadcast announcements, in accordance with KRS Chapter 424.

(4) [(3)] The commissioner may retain at the applicant's expense any attorneys, actuaries, accountants, investment bankers, or other experts not otherwise a part of the commissioner's staff that may be necessary to assist the commissioner in reviewing the proposed application and plan of reorganization or merger.

(5) [(4)] Upon receipt of the application and plan of reorganization or merger, the commissioner shall submit any application to the Attorney General for examination. The Attorney General shall have access to the commissioner's staff and all consultants retained by the commissioner for review of the application. The Attorney General may examine the application and plan or reorganization or merger for compliance with the standards in KRS 304.37-555. The Attorney General may submit written findings and a recommendation of approval, disapproval, or conditional approval of the application and plan or reorganization or merger to the commissioner. Written findings and recommendations shall be delivered to the commissioner no later than five (5) days prior to the public hearing required by KRS 304.37-505 and 304.37-510 and shall be entered into the record at the hearing.

(6) [(5)] The commissioner shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.

(7) ~~(6)~~ Following the hearing required in KRS 304.37-505 and 304.37-510, the commissioner shall, by order, approve, conditionally approve, or deny an application. The commissioner may require, as a condition of approval of the proposed reorganization, modification of the proposed plan or reorganization as the commissioner finds necessary. The applicant shall accept required modifications by filing appropriate amendments to the proposed plan of reorganization with the commissioner within thirty (30) days of the date of the order of the commissioner requiring modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within thirty (30) days, the proposed reorganization shall be deemed denied.

(8) ~~(7)~~ An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within one hundred eighty (180) days unless the time period is extended by the commissioner upon a showing of good cause.

(9) ~~(8)~~ The commissioner may revoke approval or conditional approval of an applicant's plan of reorganization if the commissioner finds the applicant has failed to comply with the plan of reorganization. The commissioner may compel completion of a plan of reorganization unless the plan is abandoned in its entirety. The commissioner shall retain jurisdiction over the applicant until a plan of reorganization has been completed.

(10) ~~(9)~~ Upon completion of all elements of a plan of reorganization and any conditions placed on the reorganization by the commissioner, the applicant shall provide a notice of and documentation of completion to the commissioner.

(11) ~~(10)~~ Within twelve (12) months after the commissioner receives the notice specified in subsection (9) of this section, the commissioner shall examine the affairs, transactions,

accounts, records, and assets of the mutual holding company, reorganized insurer, and its affiliated persons for compliance with the plan of reorganization and for protection of policyholder interests.

Section 18. KRS 304.49-150 is amended to read as follows:

(1) No provisions of this chapter, other than those contained in KRS 304.49-010 to 304.49-230 or contained in specific references contained in KRS 304.49-010 to 304.49-230, shall apply to captive insurance companies.

(2) Any industrial insured captive insurer which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et. seq., as amended, shall be subject to the following provisions of this chapter and the regulations promulgated thereunder, to the extent applicable and not in conflict with the express provisions of this subtitle:

(a) Subtitle 1 - Scope-General Definitions and Provisions;

(b) Subtitle 2 - Commissioner of the Department of Insurance;

(c) Subtitle 3 - Authorization of Insurers and General Requirements, including but not limited to:

1. KRS 304.3-400 to 304.3-430-Producer Controlled Insurers; and

2. KRS 304.3-500 to 304.3-570-Managing General Agents;

(d) Subtitle 4 - Fees & Taxes;

(e) Subtitle 5 – Reinsurance including but not limited to KRS 304.5-120-Limits of Risks;

1 (f) Subtitle 6 - Liabilities and Reserves;

2 (g) Subtitle 7 - Valuation of Investments;

3 (h) KRS 304.9-700 to 304.9-759 - Reinsurance Intermediaries Act.

4 (i) Subtitle 33—Rehabilitation and Liquidation;

5 (i) Subtitle 37 - Insurance Holding Company Systems; and

6 (j) Subtitle 99 - Penalties.

7 Section 19. KRS 304.99-152 is amended to read as follows:

8 (1) Any insurer failing, without just cause, to file any registration statement as required by
9 Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil
10 penalty of ten thousand dollars (\$10,000) for each day's delay to the commissioner. The
11 maximum civil penalty under this section shall be one hundred thousand dollars
12 (\$100,000). The commissioner may reduce the civil penalty if the insurer demonstrates to
13 the commissioner that the imposition of the penalty would constitute a financial hardship
14 to the insurer.

15 (2) Every director or officer of an insurance holding company system who knowingly
16 violates, participates in, assents to, or who knowingly permits any of the officers or
17 agents of the insurer to engage in transactions or make investments which have not been
18 properly reported or submitted pursuant to KRS 304.37-020(1), 304.37-030(2), or
19 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in their individual
20 capacities, a civil penalty of not more than five thousand dollars (\$5,000) per violation,
21 after notice and hearing before the commissioner. In determining the amount of the civil

penalty, the commissioner shall take into account the appropriateness of the civil penalty with respect to the gravity of the violation, the history of previous violations, and other matters justice may require.

(3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director, officer, employee, or agent has engaged in any transaction or entered into any contract which is subject to KRS 304.37-030 and which would not have been approved had approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the commissioner may also order the insurer to void the contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.

(4) If it appears that any insurer or any director, officer, employee, or agent has committed a willful violation of Subtitle 37 of this chapter, the commissioner may cause criminal proceedings to be instituted in the Circuit Court for the county in which the principal office of the insurer is located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court against the insurer or the responsible director, officer, employee, or agent. Any insurer which willfully violates Subtitle 37 of this chapter, may be fined not more than one hundred thousand dollars (\$100,000). Any individual who willfully violates Subtitle 37 of this chapter, may be fined in his or her individual capacity not more than one thousand dollars (\$1,000), be imprisoned for not more than one (1) to three (3) years, or both.

(5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of

his or her duties under Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than one (1) year or more than five (5) years, or fined ten thousand dollars (\$10,000), or both. Any fines imposed shall be paid by the officer, director, or employee in his or her individual capacity.

(6) If it appears to the commissioner that any person has committed a violation of section 16 of this act which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with KRS 304, Subtitle 33.

Section 20. KRS 304.49-070 is amended to read as follows:

(1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.

(2) **(a)** On or before March 1 of each year, each captive insurer shall submit to the commissioner a report of its financial condition, verified by oath of two (2) of its executive officers.

(b) Each captive insurer shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles or international accounting standards. The approved accounting method may contain any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Any captive insurer whose use of statutory accounting principles is approved by the commissioner may make modifications and adaptations as are necessary

to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and, subject to the commissioner's approval, to make its reports under this section consistent with the purposes of this subtitle.

(c) Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the commissioner. **An actuarial opinion summary shall not be required to be filed when a certification of loss and loss expense reserves and opinion of reserve adequacy is filed with the department by a captive insurer, unless otherwise requested by the commissioner.** ~~[The provisions of KRS 304.3-242(7)(a) and (d) shall not apply to a captive insurer.]~~

(d) A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205 **and an actuarial opinion summary pursuant to KRS 304.3-242**, with additional information or modification as the commissioner may prescribe.

(e) The commissioner shall by administrative regulation propose the forms in which captive insurers shall report.

(3) Any captive insurer may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.

(4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the commissioner a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the commissioner is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction

provides adequate information concerning the financial condition of the foreign captive insurer, the commissioner may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

Section 21. KRS 304.99-085 is amended to read as follows:

(1) **A broker that fails to file an affidavit as provided by KRS 304.10-050 shall be liable for a penalty fee of one hundred dollars (\$100).**

(2) **A broker that exhibits a pattern of failing to file affidavits as provided by KRS 304.10-050 shall be subject to a penalty fee not less than one thousand dollars (\$1,000) or more than five thousand (\$5,000), revocation of license, or both, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause.**

~~(3) [(4)]~~ **A broker that** ~~[If any broker]~~ fails to file **a quarterly** ~~[his annual]~~ statement as provided by KRS 304.10-170, ~~[he]~~ shall be liable for a **penalty fee of five hundred dollars (\$500).** ~~[fine of ten dollars (\$10) for each day of delinquency commencing with the first day of April].~~

~~(4) [(2)]~~ If any broker fails to remit the tax provided by KRS 304.10-180~~(1)(a)~~, unless it is shown to the satisfaction of the commissioner that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the commissioner shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than **five hundred dollars (\$500)** ~~[twenty-five dollars (\$25)].~~

SECTION 22. A NEW SECTION KRS CHAPTER 304, SUBTITLE 99 IS CREATED TO READ AS FOLLOWS:

- 1 *The certificate of authority of an insurer may be reinstated by the commissioner pursuant to*
- 2 *section 1 of this act if the request for reinstatement is accompanied by a fine in the amount of*
- 3 *one thousand dollars (\$1,000).*